

1505940 (Migration) [2018] AATA 331 (21 February 2018)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1505940
MEMBER:	Fiona Meagher
DATE:	21 February 2018
PLACE OF DECISION:	Brisbane
DECISION:	The Tribunal affirms the decision not to grant the applicants Partner (Residence) (Class BS) visas.

Statement made on 21 February 2018 at 12:28pm

CATCHWORDS

Migration – Partner (Residence) (Class BS) visa – Subclass 801 (Spouse) – Claims of family violence by the visa applicant – Sponsor – Serious medical condition – Contrived relationship for immigration purposes – Sponsor controlled the sponsorship, finances and related matters – Never been a genuine spousal relationship

LEGISLATION

Migration Act 1958, ss 65, 359AA, 376

Migration Regulations 1994, r 1.15A Schedule 2 cl 801, 801.211, 801.221

CASES

Guven v Minister for Immigration & Anor [2006] FMCA 311

Nassouh v Minister for Immigration and Multicultural and Indigenous Affairs (2000) FCA 788

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 8 April 2015 to refuse to grant the applicants Partner (Residence) (Class BS) visas under s.65 of the *Migration Act 1958* (the Act).
2. The first named applicant (the applicant) applied for the visa on 20 April 2012 on the basis of her relationship with her sponsor. At that time, Class BS contained only one subclass: Subclass 801 (Partner). The criteria for the grant of this visa are set out in Part 801 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria. Relevantly to this matter the primary criteria include cl.801.221.
3. The delegate refused to grant the visa on the basis that the applicant did not satisfy cl.801.221 because she was not satisfied that the applicant was the spouse or de facto partner of her sponsor. A copy of the delegate's decision was provided with the application for review.
4. The applicants appeared before the Tribunal on 2 March 2017, 26 June 2017 and 11 September 2017 to give evidence and present arguments. The Tribunal also received oral evidence from [the] sponsor. The Tribunal hearing was conducted with the assistance of an interpreter in the Vietnamese and English languages.
5. The applicants were represented in relation to the first two hearings of the review by their registered migration agent who attended those hearings. The applicants were not represented for the third hearing and no representative attended the Tribunal on that date.
6. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. The issues in the present case are whether the applicant and sponsor are in a genuine spousal relationship, and whether the primary applicant meets Public Interest Criteria (PIC 4020) as required by cl.801 for the granting of the Visa.
8. **History of hearings**
9. The primary applicant in this case is a [age]-year-old from Vietnam. The secondary applicant is the daughter of the first applicant, currently [age] years old. The sponsor is an [age]-year-old citizen of Australia. The applicant was granted a subclass 820 visa on 9 August 2012. According to the delegate's decision the department requested documentation in relation to the applicants' subclass 801 visa via their authorised migration agent on 17 February 2014. He responded to that request by providing documents on 14 May 2014 and 16 June 2014. In February 2015 the applicants appointed a new migration agent, who advised the department that the primary applicant's relationship with the sponsor had ceased and that he would be submitting claims of family violence.
10. The delegate's decision was made on 8 April 2015 and found that the applicant was not the spouse or de facto partner of the sponsor. Although there was material before the delegate claiming the applicant had been subject to family violence, the delegate did not deal with that

issue as she considered the threshold issue of whether the parties were in a genuine relationship was not satisfied.

11. Case law has indicated that prior to assessing whether family violence has occurred the Tribunal is required to make findings as to whether or not the applicant and her sponsor were ever in a genuine and continuing spousal relationship.
12. The decision of *Guven v Minister for Immigration & Anor* [2006] FMCA 311 (24 March 2006) reviewed a decision of the Migration Review Tribunal (MRT) handed down on 6 October 2005 which affirmed a decision whereby the applicant claimed family violence. The MRT found that the visa applicant was not entitled to the grant of the Partner (Migrant) (class BC) visa after applying the test outlined in *Nassouh v Minister for Immigration and Multicultural and Indigenous Affairs* (2000) FCA 788. This was because the MRT, as it was then constituted, was not satisfied that there was any point in time at which the relationship between the visa applicant and the sponsor could properly be regarded a spousal within the meaning of Regulation 1.15A of the Migration Regulations.
13. The issues of both relationship and family violence were before the Tribunal on 2 March 2017 (the first hearing). However, at the commencement of the hearing the primary applicant, who was extremely distressed, stated that her husband had been admitted to hospital with [a serious medical condition] and he was close to death. She [wanted] to go to the hospital to be with him.
14. The Tribunal decided that given the extreme distress of the primary applicant, it would adjourn the hearing to a date to be fixed. The applicant resisted that, claiming that she had lived with the sponsor for three years and she was entitled to her Visa. The Tribunal explained that it had to be satisfied of a number of matters before it could remit the matter to the department, that that would involve an exhaustive and lengthy examination of the circumstances of the parties, and that given the primary applicant's severe distress and desire to be with her husband, it would adjourn the hearing to a date to be fixed.
15. On 3 April 2017, the Tribunal received an email from the applicant's registered migration agent attaching a statutory declaration from [Ms A]. The covering email stated:
 16. *Can you please forward the attached psychologist report/stat deck to member Fiona Meagher in relation to above case was postponed due to the clients confuse behaviour at the initial hearing on 2 March 2017.*
 17. *It was arranged for [Ms B] to revisit her psychologist to determine if she had capacity to understand and participate in the Tribunal hearing process. The psychologists findings are attached for the members information.*
18. The statutory declaration stated:
 1. *I, [Ms A], registered psychologist, [registration number], make the following declaration under the Statutory Declarations Act 1959:*
 2. *[Ms B] was referred to me by her general practitioner for assessment and psychological treatment of anxiety symptoms, on [date] February 2015. Her GP, [referred] her to my office for more psychological treatment on [date] March 2017 again due to [other conditions].*
 3. *[Ms B] attended the appointment and was assisted by an interpreter.*

4. *During the session, we mainly discussed her concerns regarding her contact with her ex-partner. [Ms B] described clearly how she is still scared of her ex-partner, [and] strongly believe that would be dangerous to attempt a relationship with him.*
 5. *Nevertheless, her family (mainly her brother, but also her extended family in Vietnam) are pressuring her to be supportive of [Mr C] and visited him in hospital during his illness. Her family believes it is her duty as he was financially supportive of her family in the past. It is very difficult for [Ms B] to refuse her family with so much pressure to forgive and support him.*
 6. *In addition, because [Mr C] is apparently so frail and ill in hospital, for the last month, [Ms B] believed it would be relatively safe to visit him there, satisfying her family's demands.*
 7. *[Mr C] has apologised and asked her to return to the relationship recently, however, he also refused to address any of his aggressive behaviours. [Ms B] fears that he will turn violent again and she assured me her daughter is still terrified of him and has been supporting the mother in her decision to stay separated.*
 8. *It is my professional opinion that Ms [Ms B] is cognitively and intellectually capable, however, she is in during extreme emotional circumstances and her need to keep loyalty to her daughter, family and herself may interfere with her ability to analyse a situation logically and speak about such conflict in the Tribunal is likely to worsen her anxiety attacks and overall mental health. There are grave medical concerns regarding the interference of [Ms B]'s mental state on her overall health, currently.*
 9. *We have discussed in session the possibility of her daughter speaking at the Tribunal on behalf of the family. Her daughter has witnessed and experienced most of the abuse and she is in a better position to speak of such experiences.*
 10. *I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.*
19. On 5 June 2017, the Tribunal wrote to the applicant's, inviting them to a further hearing and including relevantly as follows:
20. *On 2 March 2012 we adjourned the hearing in relation to your applications for review. The member is aware of the information provided in the statutory declaration by a psychologist, [Ms A], which describes your extreme emotional circumstances. The member takes this information into consideration, and shall make sure that the hearing is conducted in accordance with AAT Guidelines on Vulnerable Persons. However, the member is of the view that your presence at the hearing is preferable for the conclusion of your review, and therefore we invite you to the resumed hearing.*
 21. *You are encouraged to bring a friend or relative for support. You may request that the hearing be by videoconference. Evidence may be taken from your daughter if the process becomes too stressful.*

22. On 26 June 2017 a further hearing (the second hearing) was held in relation to the matter. That hearing was attended by the applicants, the registered migration agent and a support worker for the primary applicant (in accordance with the Vulnerable Persons Guidelines).

23. Evidence at the hearing on 26 June 2017

24. The Tribunal asked the primary applicant whether she felt able to give evidence, and she confirmed that she did. The Tribunal ensured that her support worker sat next to her at the hearing table.
25. The primary applicant gave evidence that the parties met in 1999 in Vietnam. She said that the sponsor visited Vietnam a couple of times and stayed at her place. On one of the visits, the sponsor travelled to Vietnam with the primary applicant's younger brother, for the younger brother's wedding.
26. The applicant said the parties kept in touch by telephone (landline to landline) several times a week, and had a longer talk on Saturdays. The primary applicant said that continued until she travelled to Australia in 2007 on a visitor visa. She said that the relationship developed further while she was in Australia – they did not go out much, other than occasionally to the [Civic] Centre, but the sponsor visited the applicant's sisters house every day. The primary applicant said that when she returned to Vietnam, the sponsor travelled with her.
27. The primary applicant said that when the sponsor returned to Vietnam with her he lived with her and her three children. She said two of her children are independent now and live in Vietnam, and the other child is the secondary applicant in this matter. She said the parties lived together in Vietnam for four months during 2008. The primary applicant said that she came back to Australia on a tourist Visa in 2009 and the sponsor insisted on marrying her. The sponsor sponsored the primary applicant to come to Australia as his wife in 2011.
28. The primary applicant stated that initially the sponsor was very kind to her and her children. She said he used to help her financially and to look after her children. She said that he also gave her a lot of emotional support.
29. When asked whether the age difference presented any problems for the primary applicant, she said that in the beginning she was a little concerned, but her family encouraged her as it meant she could come to Australia and that the sponsor cared for them.
30. The Tribunal asked the primary applicant how her brother had met the sponsor, and she responded that she did not know. She did however say that her family liked the sponsor, and have known him for a long time. The primary applicant said that she was one of 10 siblings, four of whom are in Australia, and the rest of whom are in Vietnam. She said that she also has three nieces in Australia.
31. The Tribunal explained to the primary applicant that from time to time the department receives information related to Visa application before it. In this case the department has received some such information which is subject to a s.376 certificate. The effect of a s.376 certificate is that the Tribunal is given a discretion as to whether to disclose the documents and information to the applicant.
32. The Tribunal explained that in this case it considered the certificate valid and provided a copy to the primary applicant's registered migration agent, and asked her if she wished to make submissions regarding it to the Tribunal. She did not make submissions. The Tribunal formed the view that the material was relevant, and put the gist of it to the applicant pursuant to s.359AA of the Act. The Tribunal told the primary applicant that on two occasions there had been anonymous reports that the relationship was contrived, that the primary applicant

had threatened the sponsor that she would make false police complaints, and that she had paid for the relationship to achieve permanent residency.

33. The primary applicant's response was that her marriage was real, and that she and her husband loved each other.
34. When asked about the claimed family violence, the applicant stated that the sponsor's behaviour gradually changed over time. She said that his behaviour was affected by his drinking. The primary applicant said that the sponsor drank beer in Vietnam and beer and wine in Australia. She said that the sponsor drank a bottle or cask (she was not sure) of wine per night plus a large bottle of wine. The primary applicant said the sponsor's drinking increased when he was watching TV as he drank beer rather than water. She said that his drinking made him consider herself and her daughter a burden.
35. The primary applicant also referred to an incident with Centrelink, and said that the sponsor controlled all the money including money to which she was entitled for her daughter. The primary applicant said that she did not challenge the sponsor about the money, but told her daughter (the secondary applicant) to ask the sponsor when she needed money, however the sponsor would never give her money. The primary applicant said that she had to do extra work when she could, to ensure there was money for her daughter.
36. The primary applicant said that every time the sponsor drank he made her and her daughter sit down while he verbally abused them. The Tribunal asked whether there were other types of family violence. The primary applicant stated that the sponsor threatened that he would hit her or send her back to Vietnam. The primary applicant said that the sponsor used to grab her arms and punch her in the face and that that she used to call out to her daughter, and when her daughter came out, the sponsor stopped.
37. The primary applicant said that the sponsor is not doing anything now – he is out of hospital and had [surgery].
38. The Tribunal asked the primary applicant what, if any, contact she was having with the sponsor now. The primary applicant responded that she has gone to the hospital with the sponsor a few times recently, and he comes to her sister's place and threatens to go to the police to find a way to send the applicants back to Vietnam. The primary applicant said that the sponsor has apologised and said that he would not behave like that anymore. The primary applicant also said that the sponsor had asked her brother and family doctor to ask her to come back and care for him.
39. The primary applicant said that she had asked the support worker to try and organise a meeting with her and the sponsor at his house. The primary applicant said that she feel sorry for the sponsor because he is very sick, but she does not feel sure she is safe with him. The Tribunal asked the primary applicant in which way she felt unsafe with the sponsor. The primary applicant was reluctant to answer, but eventually said that the applicant prevented her from making contact with her family.
40. The Tribunal asked the primary applicant, if that were the case, why is her brother urging her to go back to the sponsor. She said that after the sponsor kicked her and her daughter out of the house (which is when she came back from her other daughter's wedding in Vietnam on 31 December 2014) her brother no longer thought the sponsor was a good person, even though the sponsor was still asking the primary applicant's brother to persuade her to go back to him.
41. The primary applicant said that the sponsor's behaviour included swearing and yelling at her on a daily basis using the "F" word. The primary applicant said she did not know much

English – the sponsor used to wave his fist in her face, indicating he was angry – also he used to kick and threaten her. The primary applicant again said that she would call out for her daughter and when she came out, the sponsor would stop.

42. The Tribunal then heard evidence from the secondary applicant. She told the Tribunal that she was in [grade] at [High School 1] and hopes to study business when she finishes. She said that when she and her mother first lived with the sponsor he loved her mother and was very good to both of them. He used to take them shopping to buy food and help with the housework. The secondary applicant stated that the problems between her mother and the sponsor began about a year after they had been living together. She said that the arguments were always about money. As well, the secondary applicant said that once a week she and her mother went to church with her mother's family and when they returned the sponsor would scream at them saying they should not be spending time with her mother's family as they were not good people. The secondary applicant said that the sponsor "bagged" her family. She said that her mother's family was a constant problem. The secondary applicant also said that she heard the sponsor screaming and yelling at her mother, and when she, that is the secondary applicant, came out, the sponsor would stop. The secondary applicant said that she did not see the sponsor physically abuse her mother – just grab her arms.
43. The Tribunal then asked the secondary applicant whether she still had any contact with her former stepfather, the sponsor. The secondary applicant stated that she still sees him as she and her mother live with him. She said they moved back in with him because of his health. She said the applicants had returned back overnight temporarily. She then said that she had only lived with the sponsor after the first month because she was worried about her mother.
44. The Tribunal put to the primary applicant that it might have some concerns regarding her credibility, given that when asked if she was having any contact with the sponsor, she omitted to say that she was staying overnight with him. The primary applicant stated that she is only staying overnight because of the sponsor's health. When asked about the circumstances and her long-term intentions, she said that she would think about whether she would go back to her sister when the sponsor is better. Then she said she would definitely go back to her sister when the sponsor is better.
45. The primary applicant said that she is not a liar. She could not remember what she is doing without a prompt. When asked by the Tribunal where she slept last night, she said at the sponsor's house. She said that she had been sleeping with her daughter at the sponsor's house since only recently.
46. The applicant concluded her evidence at that point by saying that the sponsor is abusive because he knows she does not have the paperwork.
47. The Tribunal asked the applicant's registered migration agent whether she had anything further she wished to raise, and she declined to do so. The Tribunal concluded the hearing that day, indicating it would consider the evidence it had heard, and consider whether a further hearing was necessary, in which case it would duly invite the applicants to same.
48. On 28 June 2017 the Tribunal received a letter from the primary applicant which stated as follows:

49. *Today I would like to write a letter from the bottom of my heart to apologise you on the matter that happened on my AAT court on the 26th June, 2017: I did not inform you as well as my legal agent – [the] fact that my daughter and I moved back to live with my ex-husbandsince mid-May, 2017 until now to help him because of his critical heart problem.*

50. As you knew, on my last AAT on the 2nd March I appeared mentally unfit so much that you had to dismiss it. It was because I always felt unsure about moving back to live with [my ex husband]that he constantly came to my sister home at[address], screaming for help. He also sincerely apologise me many times for his behaviours before and begged me to come back. I hesitated to move back with because I was worried about my safety and still scared of him.

51. Since April, 2017 I often called in to see him or sometimes went to doctor or hospital with him. Occasionally I stayed overnight with him, especially when he was so sick. During the night to stay there I observed and could see how he was struggling to make the nights through: he sat sleeping on two seat sofa with lots of pillows put around him and he breathed very heavily. Sometimes, he could not breathe and called me to help him during the nights. We had to call ambulance for him a few times. At that time [my daughter]was not with me when I stayed at[my ex-husband], but she really worried for me as well

52. As a result, [my daughter]and I decided to move to live with [my ex-husband]so that I could help him as good friends for him. He was very happy and delighted. He agreed for me to work for a few days a week so that I can contribute to the living cost and no longer complained about us to interact with others are going to church on Saturday.

53. After the 2nd March, 2017 I was referred to see psychologist –[Ms A]and saw her few times. In the sessions with her I also told about this matter and she often reminded me that I had to look after myself rather than others. I know she was right, but I could not ignore a person who raised their hands and begged for help like [my ex-husband]did.

54. I am sorry that I lied to you about this incident and I beg your mercy to forgive me. I know that I lost credibility from you because of this. However, one thing that I wish you to believe in me that my relationship with my ex-husband]is genuine, though I used to live for over three years of marriage in fears with him.

55. Evidence at the hearing on 11 September 2017

56. On 11 September 2017 (the third hearing), a third hearing was conducted at which the following issues were canvassed:

- whether the applicant and sponsor were or ever had been in a genuine and continuing spousal relationship; and
- whether the applicant was still claiming she suffered family violence.

57. At the third hearing, the primary applicant's evidence in relation to these matters was as follows:

- She and the sponsor are still a couple – the fact that he is unwell mean she cannot just neglect him.
- That at the second hearing, she was very confused so did not tell the truth and she was also still very scared of him.
- That she felt like she should return to care for him from when she received the sponsor's medical history. When asked when that date was the applicant could not remember.

- When asked again about that date, that is, when did the applicant feel like she should return to the sponsor, the applicant on this occasion said that it was at the first hearing (on 2 March 2017). The applicant at that point denied she had given false information apropos of the evidence she had given at the second hearing, and then apologised for doing so.
- The applicant said that she did not tell the truth then, but went to the psychologist and explained about herself and the sponsor.

58. The primary applicant also stated that:

- There is a relationship between herself, her daughter and her husband.
- She reminds her husband to take his medication, looks after him when he has his attacks, [makes] him soup, and that he could feel tired at any time.

59. When asked about family violence, the primary applicant denied that she had claimed that the sponsor had hurt her. The Tribunal referred the applicant to the statutory declarations provided, and evidence given at the second hearing. The Tribunal indicated that it had difficulty with the primary applicant's credibility, given the numerous contradictions in her evidence, and noted that it had difficulty with her credibility at the second hearing regarding her evidence about the level of contact she was having with the sponsor.

60. The Tribunal also revisited the anonymous allegations referred to at the second hearing. The Tribunal's findings in relation to the s.376 certificate are set out above. The applicant stated that she had never said that the sponsor had abused her. The Tribunal pointed out to the applicant that there were numerous references to abuse contained in her statutory declarations. The applicant then said on one occasion the sponsor squeezed her head which hurt a bit, but that he did not bash or beat her.

61. Pursuant to the provisions of s.359AA, the Tribunal put to the primary applicant that she and the secondary applicant currently reside at[address]. It then put the following allegations to her: that she had paid the sponsor some money for a fake marriage in order for her to remain in Australia. She has tried to bring her other two daughters who still reside in Vietnam to Australia. She has threatened the sponsor on many occasions that if she does not get her permanent residency she will go to the police and the Vietnamese community to allege that he has physically abused her and sexually abused his stepdaughter. The Tribunal further put that this marriage had been arranged by the primary applicant's eldest sister who is an Australian citizen. The primary applicant's eldest sister had been involved in organising other fake visas. The cost of the fake marriages is \$[amount].

62. The applicant denied all of those allegations. She said that the only fees she and her husband paid were for the paper work and application fees.

63. The Tribunal then took evidence from the sponsor. He said that his wife was confused and misled by her relatives as to what she needs in Australia. He said he provides her with everything. He said that around 2015 he lived without her for 13 or 14 months but that he would never allow anything like that to happen again.

64. The sponsor said that the false information was given because of her family.

65. The sponsor said that he wanted his wife to stay because he had known his stepdaughter since she was [age] months old. He said that his wife left him when his son was [age]months old – she saw how badly the applicant's daughter was being treated so decided he would do anything he could to help her including sending her to university.

66. The sponsor said that if his wife was forced to leave Australia he would probably end up in hospital and his heart will not take it. He said that she gives him life every morning, she only works twice a week –, [she] has a garden at home, she visits friends and does a bit of sewing.
67. He said that the applicant mends his [sport]team's jerseys for nothing. He said that sometimes his brother's son comes to stay and the applicant minds him. The sponsor said that now they are living peacefully – she's different now to how she was when she came over from Vietnam. His son calls her mum and stays with them when he comes to [stay].
68. The sponsor said that he has some friends he visits, particularly from the [sport]club where he is still a manager. He said that his health is now holding, although he ran out of [medicine]at 2 AM that morning. He said that he took six tablets a day, saw his GP twice weekly and [a]specialist every 3 to 4 months. He said he only drives around[his suburb], but otherwise catches the bus because it is cheaper.
69. The sponsor said that the applicant was talked into the family violence claim by people from Vietnam (who are very bad) because they thought she would have a better chance with someone else. He said that he was not paid money by her to marry her. He said that he gave her money but did the shopping because he was a very good shopper. He said that the parties both cook their own cuisines, and that his daughter "loves his cooking". The sponsor also denied hitting the applicant or being emotionally or financially controlling – he said he had to be very careful with money because he had so little – he was under a financial burden.
70. The sponsor said that he wanted the primary applicant to stay here because she's different now – he has taught her and her daughter how to "do it the right way and not the wrong way". The sponsor said that the whole problem had been caused by Centrelink and that if the primary applicant did not stay, he did not know what would happen if his [condition worsens]nor does he know what will happen to the new appliances including carpet and air-conditioner.

WHETHER THE PARTIES ARE IN A SPOUSE OR DE FACTO RELATIONSHIP

71. Relevantly to this matter, cl.801.221(2)(c) requires that at the time of this decision, the applicant is the spouse of the 'sponsoring partner', who must be an Australian citizen or Australian permanent resident or an eligible New Zealand citizen who was specified in the related Subclass 820 visa application as the spouse or de facto partner of the applicant. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen by Grant [date]and was identified in the Subclass 820 visa application. On the evidence before it, the Tribunal is satisfied that the sponsor is the 'sponsoring partner' of the applicant.
72. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as husband and wife to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a) - (d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and sponsor's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

ARE THE PARTIES VALIDLY MARRIED?

73. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. The primary applicant and sponsor claim to have been married on [date] December 2011, and the Tribunal has sighted photographs of same. The Tribunal is prepared to accept, on the limited evidence, that the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

ARE THE OTHER REQUIREMENTS FOR A SPOUSAL RELATIONSHIP MET?

74. Financial aspects of the relationship

75. The delegate was not satisfied that the financial aspects of the relationship support of the parties being in a genuine relationship.
76. With respect to the sharing of day to day household expenses, the applicant told the Tribunal at the second hearing that the sponsor was initially financially supportive of her and her family, and this was supported by the evidence of the secondary applicant. However she also claimed (in relation to her "interim" claim regarding family violence) to have been financially controlled by the sponsor, and the sponsor in effect acknowledged that that had been the case due to his straightened circumstances. The primary applicant also claimed, at the second hearing, that she was denied access to Centrelink payments to which she was entitled in respect of her daughter. At the second hearing she said that she was forced by the sponsor to take jobs to have money for her daughter. She subsequently said that the sponsor "agreed" her to work.
77. In terms of legal obligations in respect of each other, the sponsor provided a copy of his will dated 22 May 2017 at the third hearing on 11 September 2017, in which he appoints his wife and son as the executors and trustees of his estate. The Tribunal considers that the date upon which the document was made indicates that it was prepared to bolster the claim of a genuine relationship, and places little weight on it as the sponsor evidence was that he rented his dwelling and the parties lived in straightened financial circumstances. There are no documents supporting any legal obligation owed by the applicant to the sponsor.
78. There is no evidence before the Tribunal regarding joint ownership of assets or responsibility for joint liabilities. The sponsor's evidence was that he rents his house. There is no evidence of pooling of financial resources (particularly in relation to major financial commitments).
79. The Tribunal finds the evidence regarding the financial aspects of the relationship to be slim, and where it exists, to be internally inconsistent and contradictory, and therefore places little weight upon it.

80. Nature of the household

81. The applicant stated that she cared for the sponsor at the hearing on 11 September 2017. As to the nature of the household prior to that, the evidence of the primary applicant, at the hearing on 26 June 2017, was that the applicant and sponsor had lived together, shared the housework and cooked for each other but that the sponsor denigrated the applicant's family, and did not want her to mix with them. At that hearing, the applicant said that the parties had lived together prior to the separation due to family violence. When asked to describe the family violence the primary applicant described emotional, financial, verbal and physical abuse.
82. When asked how much contact they were having as at the date of the second hearing, the applicant said she took the sponsor to a few doctor's appointments and he came around to

her sisters to demand she come home. At that hearing however, the primary applicant's daughter (the secondary applicant) said in her evidence, that she and her mother were living with the sponsor again. The inconsistencies were put to the primary applicant who, as set out above, did not respond at hearing, and subsequently sent the Tribunal the letter set out above in paragraph 42. At the third hearing, the primary applicant stated that she had been confused, but that she did not lie, and then stated that she had lied, but had gone to the psychologist to talk to her about the sponsor. The primary applicant then said that she had not accused the sponsor of abuse, and the Tribunal drew her attention to statutory declarations she had made and caused to be made, and the evidence she had given at the first hearing. The Tribunal notes that even within the evidence regarding family violence there are internal inconsistencies.

83. The sponsor said that the parties had been separated for 13 to 14 months but were now living together again, and that he would never let the applicant go again. He said that he did the shopping because he was such a good shopper and each of them cook their own cuisines. The sponsor said the applicant's daughter loves his cooking.
84. With respect to the issue of care and support for children, the evidence was inconsistent. The primary applicant claimed that the sponsor initially helped support her family including her daughter, the secondary applicant. The secondary applicant's evidence was consistent with that. However at other times and evidence, the primary applicant stated that she was "forced" to work to support her daughter. The sponsor claimed (at the third hearing) that he wanted to help the second applicant go to university.
85. Given the internal inconsistencies in the evidence of the primary applicant, and the contradictory nature of the evidence of the parties generally, the Tribunal places little weight on the evidence of the nature of the household.

86. Social aspects of the relationship

87. The Tribunal considered the photographs and statutory declarations provided by the applicant referred to in the delegate's decision. The Tribunal also considered the evidence that the sponsor was controlling and would not allow the applicant to visit her family. The sponsor gave evidence that the applicant's family were "part of the problem", and gave her the idea to claim family violence. He also said that his son stays with him and his wife at the Inala address when he is visiting and calls her "mum". From the oral evidence, it is not clear what the applicant's family's attitude is towards the sponsor.
88. The Tribunal notes that there is no independent current evidence of the nature of the household, including the extent to which they represent themselves as being married to each other, and what the opinion of friends and acquaintances is as regards the nature of the relationship. The photographs provide limited evidence of the coupled socialising. Further, that the oral evidence of the parties was confusing and not commensurate with being in a genuine relationship.
89. The Tribunal places little weight upon the evidence's as to the social aspects of the relationship.

90. Nature of the persons' commitment to each other

91. The parties claim to have known each other for some time (since 1999), have been married since 2009, and the applicant said that she moved to Australia to live with the sponsor in 2011. However, the history of the relationship could best be described as chequered. It is difficult to pinpoint the length of the relationship, given the extended periods of time apart claimed by the sponsor, and inconsistently claimed by the primary applicant.

92. The sponsor claims that the relationship was initially difficult due to the primary applicant's family. He says that the relationship is now ongoing as he has taught the applicants what to do. The primary and secondary applicant said that initially the relationship went well – the sponsor was kind and generous to the primary applicant and her children. However the primary applicant claimed that the relationship deteriorated due to the sponsor's drinking, which in turn led to family violence. The evidence that was given as to what constituted the family violence was inconsistent.
93. The claim of family violence made by the primary applicant was not supportive of the sponsor being committed to the applicant based on the mental emotional and financial abuse claimed. The primary applicant also told the Tribunal at the second hearing that the sponsor used to grab her arms and punch in the face, but in the third hearing told the Tribunal that there was no physical abuse. The primary applicant also stated that the sponsor used to resent her family and would not support her daughter's education (and that she was forced to go and cleaning to provide her daughter with money). She also said at the second hearing that the sponsor used to scream at her and her daughter. At the third hearing, although the primary applicant and sponsor appeared together in an attempt to present a united front, the applicant's main reasons for returning to the relationship was centred around perceived obligations to care for him and the sponsor presented evidence that confirmed he did not consider the applicant's family (other than her daughter) as worthwhile influences upon her. At that hearing. The sponsor also gave evidence, contrary to that given by the applicant, that he did support her daughter's education. He suggested that he was forced to control the money, as he did not have much, and he was a good shopper.
94. The sponsor claims now that he would not allow anything like the separation of 13 to 14 months from the primary applicant to happen again. The primary applicant claims now that, while she was initially frightened to return home, she is needed to care for the sponsor, and that she is "allowed" to work a little so she has some money. However the applicants' evidence about the duration of their returning to live with the sponsor appeared to be linked to his need for care, rather than any claim of being in a long-standing relationship. It also appeared to be contrived for the purposes of gaining a migration outcome, in circumstances where the primary applicant had previously given evidence, which she conceded in writing to the Tribunal, to be untrue.
95. Whatever the nature of the relationship, the Tribunal was unable to ascertain any degree of companionship or emotional support the parties draw from each other. The primary applicant may well act as a carer for the sponsor, but there was no evidence of shared interests, values or views. Accordingly the Tribunal places little weight upon the nature of the persons' commitment to each other.

96. *Credibility*

97. The Tribunal has concerns regarding the credibility of the parties in this matter. In particular, at the second hearing the primary applicant gave a very incomplete and contradictory version of the amount of contact she was having with the sponsor, to that given by the secondary applicant. Indeed, the primary applicant failed to mention that the parties were actually living together again; rather she stated that she took the sponsor to a few appointments and that he came to her sisters and demanded she came home. In contrast the secondary applicant stated that she and the primary applicant were living with the sponsor.
98. Further there are inconsistencies regarding when the claimed marriage was happy and when it started to fail, and the reasons why. The sponsor suggested that the difficulties occurred as a result of the applicant's family's interference, whereas the primary applicant claimed that the difficulties arose because of the sponsor's drinking. The primary applicant was

inconsistent about the extent and type of family violence she experienced, and indeed whether she experienced any at all. The secondary applicant's evidence was also inconsistent with that of the primary applicant with respect to the extent and type of family violence.

99. The Tribunal considers that the acknowledged duplicity of the primary applicant about matter central to her claims make it difficult to accept any of her evidence is truthful, and accordingly has doubts about all of it.
100. The Tribunal therefore does not consider the primary applicant to be a witness of credit. The Tribunal is not satisfied that she has told the truth or explained the many inconsistencies in her story satisfactorily. In forming this view, the Tribunal had regard to the statutory declaration of Ms [Ms A] dated 24 March 2017 referred to in paragraph 15 above. The Tribunal considers that it went out of its way to ensure that the primary applicant was appropriately supported in accordance with the Vulnerable Person's Guidelines. To that end, the Tribunal had a "soft touch" approach to questioning the primary applicant, and intended to ask the secondary applicant for further details, as requested in the statutory declaration. However, the evidence given by the secondary applicant was directly contradictory to that which was given by the primary applicant.
101. Whilst ordinarily the Tribunal would not give weight to anonymous third-party "dob-ins" sent to the Department, in this instance the Tribunal places some weight upon them, as the allegations contained therein are consistent with a contrived relationship for immigration purposes, which is what this relationship appears to be, based on the evidence before it.
102. Taken overall, the Tribunal does not consider the circumstances of the relationship including those listed in r.1.15A(3) support the parties being in a genuine and continuing relationship with a mutual commitment to a shared life together.
103. In this regard, the Tribunal has to query, if the relationship had been a genuine and continuing one as envisaged by regulation 1.15A why the sponsor would have considered he needed to teach the applicant and her daughter how to behave. The relationship, if it was entered into as a genuine and continuing one, would have meant that the parties would have shared with one another their expectations of marriage, particularly with respect to the financial arrangements and contact between the applicant and her extended family. This leads the Tribunal to query whether the sponsor's motivation for entering into the relationship had not been for the purpose of making a financial benefit from the applicant. If it turned out that the financial benefit was ultimately unable to be provided, this would explain the wildly inconsistent evidence and claims made by the primary applicant regarding the status of the relationship and in particular that it had broken down due to family violence when in fact she was again living with the sponsor and caring for him.
104. The Tribunal queries therefore whether the sponsor's prime motivation for entering into an arrangement with the applicant involved the sponsorship being conditional on the applicant providing the sponsor with funds solely for the purposes of achieving a migration outcome for the applicant. This would explain, in the view of the Tribunal why the applicant made claims of family violence to achieve a migration outcome when the relationship had, in fact, never been a genuine spousal one, rather it may be that the applicant either reneged on the payments or part thereof or the sponsor irrespective of the payments was not able to sustain the claimed relationship. This may also explain why the sponsor, if it is true, was totally in control of the day-to-day operations and finances of the relationship.
105. The Tribunal has difficulty seeing what other reason the sponsor may have had for ensuring that he was in complete charge of the relationship. Rather than the primary applicant being the victim of the sponsor's actions, the Tribunal considers that she was complicit in the

agreement but was either unable to honour her side of the bargain or found the sponsor very difficult, irrespective of whether or not payments were made. The Tribunal appreciates the case law states that marriages do not need to be based on love and that mixed motivations can come into play for an applicant to meet the criteria for being in a genuine spousal relationship. The Tribunal is also aware of more recent case law that states that relationships can be entered into for a mutual benefit. This does not mean that the decision-maker is abrogated of their responsibilities to enquire, however, as to whether the parties meet the requirements of regulation 1.15A.

106. In this case the primary applicant argued that the sponsor controlled the sponsorship, finances and related matters and that this was indicative of his abuse of her. In light of the evidence before it, the Tribunal is minded to find that the sponsor's control of the applicant was a function of the fact that the parties were never in a genuine and continuing spousal relationship.
107. For the reasons above, the Tribunal is not satisfied that the parties were not living separately and apart on a permanent basis. It is also not satisfied that the parties saw the relationship as long term or that they had a mutual commitment to one another to the exclusion of others.
108. On the basis of the evidence, the Tribunal is not satisfied that the applicant and the sponsor were ever in a genuine and continuing spousal relationship. The Tribunal therefore finds that the applicant does not meet cl.801.211 at the time of application and cl.801.221(2) at the time of decision. This is determinative of the review and the Tribunal is not required to assess whether family violence occurred.
109. For the reasons above, the applicants do not satisfy the criteria for the grant of the visas.

DECISION

110. The Tribunal affirms the decision not to grant the applicants Partner (Residence) (Class BS) visas.

Fiona Meagher
Member

ATTACHMENT - EXTRACT FROM MIGRATION REGULATIONS 1994

1.15A SPOUSE

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).